



INTERNAL AUDIT DIVISION

AUDIT REPORT

Comprehensive Interim Audit of UNMIK Mandate Implementation - Civil Administration

**28 February 2008
Assignment No. AP2007/650/14**

United Nations  Nations Unies

INTEROFFICE MEMORANDUM

MEMORANDUM INTERIEUR

INTERNAL AUDIT DIVISION · DIVISION DE L'AUDIT INTERNE

OFFICE OF INTERNAL OVERSIGHT SERVICES · BUREAU DES SERVICES DE CONTRÔLE INTERNE

TO: Mr. Joachim Rücker
A: Special Representative of the Secretary-General
UNMIK

DATE: 28 February 2008

FROM: Dagfinn Knutsen, Director
DE: Internal Audit Division, OIOS



REFERENCE: IAD: 08- 01076

SUBJECT: **Assignment No. AP2007/650/14 – Comprehensive Interim Audit of UNMIK Mandate**
OBJET: **Implementation – Civil Administration**

1. I am pleased to present the report on the above-mentioned audit.
2. In your 4 February 2008 memorandum to OIOS, you indicated that UNMIK was not prepared to comment on the draft report, as it did not constitute the correct basis for OIOS recommendations. In OIOS' opinion, however, the findings and recommendations provided in the report identify the main areas for improvement concerning the implementation of the UNMIK mandate. It is also an obligation of the UNMIK Administration to cooperate with OIOS in providing comments on each recommendation outlined in the draft report.
3. OIOS would like to clarify that all findings and tentative recommendations had been discussed with the UNMIK Administration at the exit conference held on 9 August 2007. Therefore, this report has incorporated UNMIK's comments made at the exit conference, as well as the commentaries from your 4 February 2008 response to the draft report. In order for us to close the recommendations, we request that you provide us with information as discussed in the text of the report and also summarized in Annex I.
4. Please note that OIOS will report on the progress made to implement its recommendations, particularly those designated as critical (i.e., recommendations 1 to 4, 6 to 9, 12 to 15, 21, 23 and 25) in its annual report to the General Assembly and semi-annual report to the Secretary-General.

cc: Mr. Jean-Marie Guéhenno, Under-Secretary-General for Peacekeeping Operations
Mr. Philip Cooper, Director, DFS
Mr. Swatantra Goolsarran, Executive Secretary, UN Board of Auditors
Mr. Jonathan Childerley, Chief, Oversight Support Unit, Department of Management
Mr. Byung-Kun Min, Programme Officer, OIOS
Ms. Emma Shitakha, Chief of Staff, UNMIK
Mr. Berner Matthee, Chief Resident Auditor, OIOS

INTERNAL AUDIT DIVISION

FUNCTION

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CONTACT INFORMATION

DIRECTOR:

Dagfinn Knutsen, Tel: +1.212.963.5650, Fax: +1.212.963.2185,
e-mail: knutsen2@un.org

DEPUTY DIRECTOR:

Fatoumata Ndiaye: Tel: +1.212.963.5648, Fax: +1.212.963.3388,
e-mail: ndiaye@un.org

CHIEF, [RELEVANT IAD] AUDIT SERVICE:

[Insert name of Service Chief]: Tel: +xxx, Fax: +xxx,
e-mail: [internet address](#)

EXECUTIVE SUMMARY

Comprehensive Interim Audit of UNMIK Mandate Implementation - Civil Administration

At the request of the Special Representative of the Secretary-General, OIOS conducted a comprehensive interim audit of the United Nations Interim Administration Mission in Kosovo (UNMIK) mandate implementation from June to August 2007. The main objective of the audit was to assess UNMIK's performance while implementing Security Council resolution 1244 (1999), focusing on its civil administration mandates with respect to: (i) performing basic civilian administrative functions; (ii) promoting the establishment of substantial autonomy and self-government in Kosovo; (iii) promoting human rights; and (iv) ensuring the safe and unimpeded return of all refugees and displaced persons to their homes in Kosovo. The audit was conducted in accordance with the International Standards for the Professional Practice of Internal Auditing. OIOS plans to conduct further reviews of UNMIK's mandate implementation in 2008.

OIOS determined that UNMIK did not establish minimum criteria for assessing the preparedness of Central Government Ministries and Local Government Municipalities before the transfer of civil administration competencies, and failed to put effective mechanisms in place to monitor and determine whether the Ministries and Municipalities have adequately assumed the competencies transferred from UNMIK. As a result, OIOS identified fundamental concerns regarding the management of Central Government Ministry and Local Government Municipality operations. Below is a summary of the key findings:

Central Government

- There was continued non-compliance with the related laws and regulations for procurement and budget, poor project management, revenue and service performances identified through the comments received from UNMIK Ministry Representatives (UMRs) and results of audits carried out by the Office of Auditor-General of Kosovo (OAG);
- Disclaimer audit opinions have been issued on the financial statements of the Kosovo Consolidated Budget (KCB) for the years 1999 through 2006. OIOS considers the disclaimer of opinion as an indicator of serious risks of fraud or mismanagement, highlighting the lack of an adequate financial management system, since the auditor could not form an opinion on the KCB financial statements;
- OIOS found that the current accountability mechanism for Central Government Ministries managed by the Provisional Institutions of Self-Government (PISG) and UNMIK was ineffective; and
- None of the eight Standards for Kosovo, established by the SRSG and Kosovo Government in 2001 as benchmarks for UNMIK and PISG progress, including functioning democratic institutions; the rule of law; human rights; sustainable returns; freedom of movement; and property rights, have been achieved.

Local Government

- OIOS' review indicated establishment of statutory committees and working groups in most of the municipalities. However, a substantial number of established statutory committees and offices, working groups and councils were not functioning effectively;
- Financial accountability at municipalities was lacking. From 2001 to 2005, the OAG issued 141 audit opinions on municipality financial statements, of which only 16 per cent concluded that the financial statements fairly presented the financial situation. Municipalities consistently failed to comply with laws regarding procurement and finance;
- A number of competencies for which municipalities are clearly responsible were not satisfactorily delivered according to the assessment of Municipal Representatives (MRs) surveyed and UNMIK municipality standards questionnaires. These competencies included urban and rural planning and land use; local environmental protection; and implementation of building regulations and building control standards;
- Economic development strategies and plans were developed for only a few municipalities. Even in these cases, implementation was hampered by a lack of financial resources precluding sustainable economic development. The absence of adequate environmental control mechanisms posed a risk that the Organization would not be able to enforce international environmental laws and standards;
- More than 50 per cent of the respondents to OIOS' survey of MRs cited the lack of local environmental protection. Waste management, including public littering, remains a major issue. The respondents noted that no attention had been given to environmental protection;
- OIOS noted examples of serious concerns on non-compliance with the Laws and UNMIK Regulations regarding urban and rural planning, land use, construction and property taxes; and
- According to a UNDP survey conducted in June 2006, Kosovo residents were less satisfied with the delivery of municipal services than in 2003. Some 27 per cent of all Kosovo residents still did not have piped water, 38 per cent did not have access to a sewage/sanitation public system, and electricity cuts affected a substantial percentage of the population.

OIOS also noted implementation of the mandate on promoting human rights and return of all refugees and displaced persons to their homes in Kosovo has been limited.

- OIOS noted that the recent reports by Amnesty International, Minority Rights Group International and Organization for Security and Cooperation in Europe highlighted serious concerns in relation to human rights in Kosovo. These suggested that the current framework of human rights promotion has not been effective; and
- Despite efforts by UNMIK, the number of returns of displaced persons and refugees from 2000 to 2006 totaled 16,129, out of the 228,365 reported to be displaced.

In commenting on the draft report, the UNMIK Administration stated that the draft report did not provide rationale and context, or the evolution of

UNMIK's mandate over the years, and that the draft report did not constitute the correct basis for recommendations provided by OIOS. UNMIK further commented that the recommendations did not take into account the current political reality and the current phase of the mission. Many recommendations could therefore be considered as a basis for lessons learned for new missions rather than something which could be effectively implemented at this stage of UNMIK.

OIOS does not agree with this assessment and points out that the audit was conducted as comprehensively as possible within the timeframe and the resources available. In this regard, OIOS would like to clarify that the findings and tentative recommendations have been discussed with the UNMIK Administration at the exit conference held on 9 August 2007 and were taken into consideration in preparing the report. Moreover, although OIOS recognizes that UNMIK's Department of Civil Administration has limited resources and therefore strongly relies on intervention powers, UNMIK retains ultimate accountability. OIOS believes that the recommendations included in the report address the issues identified during the audit and the implementation thereof is the responsibility of UNMIK.

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I. INTRODUCTION

1. At the request of the Special Representative of the Secretary-General, OIOS conducted a comprehensive audit on the implementation of the mandates of the United Nations Interim Administration Mission in Kosovo (UNMIK) from June to August 2007. This report contains interim results on the audit of UNMIK civil administration. OIOS plans to conduct further reviews of UNMIK's mandate implementation in 2008.

2. UNMIK was established by the Security Council (SC) resolution 1244 (1999) of 10 June 1999. The Mission is mandated to help the SC to achieve its overall objective of promoting the establishment of substantial autonomy and self-government in Kosovo, pending a final settlement. The Mission is headed by the Special Representative of the Secretary-General (the SRSG), who is the highest international civilian official in Kosovo with the civilian executive powers vested in him by the SC resolution and pursuant to the Constitutional Framework for Provisional Self-Government in Kosovo (2001). A Principal Deputy SRSG assists the SRSG in directing and managing the Mission, and ensures a coordinated approach by the Mission's Pillars including (i) Police and Justice led by the United Nations, (ii) Institution-building financed by the Organization for Security and Cooperation in Europe (OSCE) and (iii) Reconstruction and Development financed by the European Union. Each of the Pillars is headed by a Deputy SRSG who is accountable to SRSG. Although UNMIK has gradually turned over competencies for administration to the provisional institutions, it retains overall administrative authority and responsibility for the province.

3. The Secretary-General stated in his report S/1999/779¹ that "The public service structures of Kosovo are largely inoperative due to a combination of neglect, war damage and the departure of trained staff. The municipalities are functioning inadequately or not at all. The telephone lines are down, schools are not open and there is practically no public transport service. With no refuse disposal since March 1999 and with widespread pollution of wells and other water sources, there is a significant risk to public health throughout Kosovo. Most hospitals are functioning, but patient care has been compromised by serious political disputes about the future management, structure and the reintegration of Kosovo Albanian staff".

4. UNMIK's mandate relating to Civil Administration included; (i) performing basic civilian administrative functions; (ii) promoting the establishment of substantial autonomy and self-government in Kosovo; (iii) promoting human rights; and (iv) ensuring the safe and unimpeded return of all refugees and displaced persons to their homes in Kosovo.

¹ United Nations Security Council, Report of the Secretary-General on the United Nations Interim Administration in Kosovo, July 1999.

Performing basic civilian administrative functions and promoting the establishment of substantial autonomy and self-government in Kosovo

5. UNMIK faced a huge challenge in setting up functioning government structures at both the central and local levels, practically from scratch, to deliver administrative services in the province of Kosovo². UNMIK had worked to establish the local government and then central government through an UNMIK Joint Interim Administrative Structure (JIAS). The JIAS was tasked with assisting in the administration of Kosovo until the establishment of sustainable institutions.

6. In 2001, the Constitutional Framework promulgated under UNMIK Regulation No. 2001/9³, transferred the responsibility for the central and local government, excluding the SRSG's reserved powers, to the Provisional Institutions of Self-Government (PISG).

7. Following the transfer of competencies to the PISG, the Civil Administration component was reconfigured into a smaller Department of Civil Administration (DCA). Table 1 shows the continuing decrease in Civil Administration staffing since the inception of UNMIK:

Table 1. Civil Administration staff numbers

Year	99/00	00/01	01/02	02/03	03/04	04/05	05/06
Civil Administration	4,645 ⁴	3099 ⁵	3,079	1,096	1033	844	734

8. Chapter 12 of UNMIK Regulation No. 2001/9 states that “the exercise of the responsibilities of the PISG under this Constitutional Framework shall not affect or diminish the authority of the SRSG to ensure full implementation of UNSCR 1244, including overseeing the PISG, its officials and its agencies, and taking appropriate measures whenever their actions are inconsistent with UNSCR 1244 or this Constitutional Framework”. Thus, OIOS is of the opinion that the ultimate responsibility and accountability in respect of civil administration ultimately rests with UNMIK and the SRSG.

Promoting human rights

9. In its Resolution 1244 (1999), the SC decided that the OSCE Mission in Kosovo would, within the overall framework of UNMIK, “take the lead role in matters relating to institution and democracy-building and human rights and rule of law.”

² Civil Administration in Kosovo 1999-2007 – Achievements, Challenges and Lessons Learned, Department of Civil Administration, UNMIK.

³ On a Constitutional Framework for Provisional Self-Government in Kosovo, May 2001

⁴ Figure based on 1,148 International Staff, 3,282 Local Staff, 203 United Nations Volunteers and 12 National Officers per A/54/807 and A/55/624.

⁵ A/55/833

Ensuring the safe and unimpeded return of all refugees and displaced persons to their homes in Kosovo

10. Paragraph 11 of UNSCR 1244 (1999) decided that the main responsibilities of the international civil presence will include “Assuring the safe and unimpeded return of all refugees and displaced persons to their homes in Kosovo.”

11. *In its 4 February 2008 memorandum addressed to OIOS, the UNMIK Administration did not comment on each recommendation stating that the draft report did not provide rationale and context, or the evolution of UNMIK’s mandate over the years, and that the draft report did not constitute the correct basis for recommendations provided by OIOS. UNMIK further commented that the recommendations did not take into account the current political reality and the current phase of the mission. Many recommendations could therefore be considered as a basis for lessons learned for new missions rather than something which could be effectively implemented at this stage of UNMIK.*

12. OIOS does not agree with this assessment and points out that the audit was as comprehensive as possible within the timeframe and the resources available. In this regard, OIOS would like to clarify that the findings and tentative recommendations has been discussed with the UNMIK Administration at the exit conference held on 9 August 2007 and were taken into consideration in preparing the report. Moreover, although OIOS recognizes that UNMIK’s Department of Civil Administration has limited resources and therefore strongly relies on intervention powers, UNMIK retains ultimate accountability. OIOS believes that the recommendations included in the report address the issues identified during the audit and the implementation thereof is the responsibility of UNMIK.

13. Comments made by the UNMIK Administration are shown in *italics*.

II. AUDIT OBJECTIVES

14. The main objective of the audit was to assess UNMIK’s performance while implementing Security Council resolution 1244 (1999), focusing on its civil administration mandates with respect to:

- (a) Performing basic civilian administrative functions;
- (b) Promoting the establishment of substantial autonomy and self-government in Kosovo;
- (c) Promoting human rights; and
- (d) Ensuring the safe and unimpeded return of all refugees and displaced persons to their homes in Kosovo.

III. AUDIT SCOPE AND METHODOLOGY

15. The audit focused on the review of the performance results achieved by UNMIK towards meeting its mandated objectives in the highest risk areas identified by OIOS. In particular, OIOS focused on the PISG Central and Local Governments.

16. In its Resolution 1244 (1999), the Security Council decided that the OSCE Mission in Kosovo would, within the overall framework of UNMIK, "take the lead role in matters relating to institution and democracy-building and human rights and rule of law." On 1 July 1999, the OSCE Mission in Kosovo was established by the OSCE Permanent Council and it forms a distinct component of UNMIK, Pillar III – Institution-building.

17. At the initial stage of the audit, on 25 June 2007, OIOS requested OSCE to provide internal oversight reports that have addressed programmatic issues regarding OSCE operations under UNMIK's mandate. In initially responding to this request, OSCE's point of contact in the Office of Internal Oversight indicated that he had prepared a paper for the OSCE Secretary-General recommending that he seek approval from the Chairmanship in Office for OSCE cooperation in this audit. To date, however, OIOS has not received a response to this request.

18. In particular, OIOS queried OSCE on 3 July 2007 concerning: "Whether any OSCE studies have been carried out on the effectiveness of the work undertaken by the Kosovo Institute of Public Administration (KIPA) and if so, to provide OIOS with a list of those studies and their dates." OIOS also requested the status of recommendations raised in the OSCE Reports on Parallel Structures in Kosovo (2006-2007), and Implementation of Kosovo Assembly Laws by the Executive Branch of the Provisional Institutions of Self-Government (January 2005). No response was initially received from OSCE regarding this request until OIOS brought this issue to the attention of UNMIK Management on 6 August 2007, after which the OSCE local contact point advised that no studies had been undertaken on the effectiveness of the work undertaken by the Kosovo Institute of Public Administration. Moreover, it should be further noted that the OSCE point of contact commented earlier in response to an information request that "OMiK does not fall within the scope of the UNMIK end of mission audit." This would imply to OIOS that OSCE does not consider its operations to be conducted under UNMIK's responsibility.

19. Based on the lack of information requested from OSCE but not provided to date, OIOS is not in a position to draw any conclusions or make any recommendations on operational aspect of OSCE in relation to institution and capacity-building including OSCE's internal oversight of OMiK programmes, or on the status of recommendations made in the OSCE reports on Parallel Structures and on the Implementation of Kosovo Assembly Laws by the Executive Branch of the Provisional Institutions of Self-Government. OIOS is also concerned that, a memorandum of understanding between UNMIK and the OSCE on "Agreed Operational Arrangements – Cooperation and Teamwork on

Local Government” was formulated and signed by both parties only on 14 February 2006 – 7 years into the Mission.

20. The main criteria used to assess the Mission’s performance and the strength of internal control systems and management practices, included: (i) United Nations Security Council Resolution 1244 (1999); (ii) Mission strategic and operational plans; (iii) Mission performance reports; (iv) Budget objectives and related success criteria; (v) applicable laws, regulations, policies and procedures; and (vi) International Organization of Supreme Audit Institutions (INTOSAI) guidelines for internal control standards for the Public Sector; best practices and other applicable standards.

21. The audit methodology included: conducting surveys of all nine UNMIK Ministry Representatives (UMR) and all 30 Municipal Representatives (MR); reviewing relevant reports and documents; and interviewing key UNMIK and OSCE Mission personnel in Kosovo.

IV. AUDIT FINDINGS AND RECOMMENDATIONS

A. Establishment of PISG Central Government and Transfer of Responsibilities

22. The Central Government Ministries in Kosovo were formally established by Chapter 9 of UNMIK Regulation No. 2001/19 on the Executive Branch of the Provisional Institutions of Self-Government in Kosovo, which states “there shall be established ministries and other executive agencies as are necessary to carry out functions within the competence of the Government.”

23. In 2007, the Central Government of Kosovo comprises 15 Ministries, of which 9 are currently monitored by DCA, including; (i) Education, Science and Technology; (ii) Culture, Youth and Sports; (iii) Labour and Social Welfare; (iv) Public Services; (v) Agriculture, Forestry and Rural Development; (vi) Health; (vii) Environment and Spatial Planning; (viii) Communities and Returns; and (ix) Local Government Administration. The remaining six Ministries of (i) Finance and Economy, (ii) Trade and Industry, (iii) Transport and Communications, (iv) Energy and Mining (v) Justice; and (vi) Internal Affairs are included in the SRSG reserved powers listed in Chapter 8 of UNMIK Regulation No. 2001/9.

24. Once the Ministries were established, UNMIK transferred administrative responsibilities to the PISG Ministries, under UNMIK Regulation No. 2001/9. However, UNMIK did not develop detailed minimum criteria to be met by the PISG Ministries, prior to responsibilities being transferred from the JIAS, which suggested that the transfers may have taken place before the ministries were fully prepared. In this regard, OIOS noted that in surveying the UNMIK ministry representatives (UMRs) assigned in each PISG Ministry under the purview of DCA to monitor and advise each Ministry, five of the nine UMRs stated that the transfer of responsibilities took place too soon. OIOS considers the absence of

criteria as the major cause of inadequate management of PISG Ministries operations, as discussed in the sections below.

Monitoring of the performance of PISG Ministries

25. DCA advised that: “following transfer of competencies in most areas except reserved functions, PISG has the responsibility for managing its own affairs. DCA’s role is mainly to monitor and advise. Irregularities that come to the attention of DCA staff are pointed out to the relevant PISG authorities and remedial actions are recommended. It is the PISG’s responsibility to address and correct irregularities. In case of serious infringement of the law, DCA applies the accountability process and seeks the intervention of the SRSG.”

26. However, OIOS is of the opinion that there was no effective mechanism in place to monitor and determine whether the PISG Ministries have adequately assumed the responsibilities transferred from UNMIK. For example, the January 2005 report of the OSCE Mission in Kosovo on the implementation of the laws of Kosovo by the Executive Branch of the PISG stated that: “UNMIK should establish a monitoring mechanism to determine the extent to which the competencies it transfers to the PISG are being properly assumed. The outcomes of this oversight mechanism could be used to estimate what other capacity building measures might be beneficial for the PISG.” This recommendation is yet to be implemented. DCA stated that the monitoring was constrained due to limited staff resources.

27. As a consequence of not establishing criteria for transfer of responsibility and putting in place an effective mechanism to monitor and determine whether the PISG Ministries have adequately assumed the responsibilities transferred from UNMIK, OIOS noted fundamental concerns regarding the management of Central Government Ministry operations involving non-compliance with the related laws and regulations for procurement and budget, and poor project management, revenue and service performance identified through the comments received from UMRs and results of audits carried out by the Office of the Auditor-General of Kosovo (OAG).

28. For example, OIOS noted the following comments from UMRs and findings from the OAG audits:

- UNMIK budget regulation for fiscal year 2006 set the maximum number of staff for the Ministry at 125 [however] the Ministry initially recruited 297 staff, without following any procedures and regulations;
- There is widespread non compliance with the relevant legal and regulatory requirements, in particular those specified in the current Law on Public Procurement (2003/17); and
- There are cases of non-compliance with the relevant legal and regulatory requirements, in particular, those specified in the current Law on Public Procurement (2003/17) and the Law on Public Financial Management and Accountability (2003/2).

29. Furthermore, the following comments were made by UMRs on project management and service performance:

- Too much power is vested in the Office of the Minister in planning of some projects and decisions are often based on personal considerations;
- Many projects are approved on an ad-hoc basis;
- No systematic oversight mechanisms for approved projects;
- Lack of experienced staff to implement the projects;
- There are no lessons learned as there is no central coordination of projects;
- At best performance management by the Ministries is ad hoc; and
- There is not a reliable performance measurement system within the Ministry; and by not having a proper operational framework, there is not an operational system of activities and a way to monitor the task/duties results.

30. Disclaimer audit opinions have been issued on the financial statements of the Kosovo Consolidated Budget (KCB) for the years 1999 through 2006 by the Netherlands Court of Audit and the OAG. OIOS considers the disclaimer of opinion as an indicator of serious risk of fraud or mismanagement as this highlights the lack of an adequate financial management system, since the auditors could not form an opinion on the KCB financial statements at all. In this regard, the audit findings included:

- A failure to collect all revenues due to the KCB;
- Lack of complete reconciliations between the primary records maintained by the budget organizations, Free Balance and the relevant bank accounts;
- Numerous identified breaches of the Law on Public Procurement (2003/17) prevent the KCB achieving the economic cost savings to be gained from an open and fair procurement process;
- Recording of expenditure against the incorrect economic and departmental codes causing distortions in the amounts reported to Ministry of Economy and Finance, the Assembly and the general public; and
- Exposure to fraudulent activity by both the public and its own employees because of the weakness in the pension benefit database internal controls and the lack of computerized interfaces between them.
- Ministry of Health - No reliance can be placed on the stocktaking procedures; Warehouse administrators have wrongly managed the essential list of drugs and as a consequence of this mismanagement the OAG have found expired drugs in the central warehouse and in each pharmacy visited; and
- Ministries in general - There is not a common reliable and adequately controlled unified asset management system; The Ministry of Economy and Finance has provided written instructions to each Budget Organization for compliance with the law, however, budget organizations are in various stages of compliance ranging from ignorance of the instructions to completing compliance.

31. OIOS further noted that the January-March 2007 United Nations Development Programme (UNDP) Kosovo Early Warning Report⁶, which was developed based on the results of Expert Group meetings and on statistical analysis of an opinion poll conducted during the second half of March 2007 indicated a decrease in the level of satisfaction with the work of the main institutions in Kosovo since the assumption of transferred responsibilities, including that of the PISG and UNMIK. OIOS considered the results of this opinion poll as an indication that PISG ministries have not properly assumed the transferred responsibilities.

Recommendations 1 to 3

(1) UNMIK should establish an effective and systematic mechanism for monitoring and evaluation of the extent to which the competencies it transfers to the PISG Ministries are being properly assumed.

(2) UNMIK should take necessary steps, including capacity building and intervention by the SRSG to ensure that the PISG Ministries assume the transferred competencies appropriately.

(3) UNMIK should ensure that subsequent decisions related to the further transfer of competencies to PISG Ministries are taken only upon the assurance that detailed minimum criteria for readiness are achieved.

32. *In its memorandum to OIOS dated 4 February 2008, the UNMIK Administration commented that the establishment of monitoring systems in PISG Ministries to which UNMIK has transferred competencies was not a practical or useful recommendation for a mission about to transition to successor arrangements. UNMIK further stated that OIOS' suggestions regarding the capacity building and the SRSG's intervention to ensure that Kosovo institutions appropriately assume transferred competencies were either too late in the lifecycle of the Mission, or untenable given the realities of the political situation on the ground.*

33. In this regard, OIOS would like to clarify that although UNMIK has gradually turned over the competencies for administration to the provisional institutions, it still retains overall administrative authority and responsibility for the province as per SC resolution 1244. Therefore, OIOS maintains that UNMIK is responsible for corrective measures and actions to address the issues identified during the audit and to implement the suggested recommendations.

⁶ Early Warning Report, Kosovo, Report #16, Political and institutional stability, Economic and social stability, Inter-ethnic relations, Public and personal security, January-March 2007.

Accountability mechanisms of the PISG central government ministries and UNMIK

34. The June 2007 Human Rights Watch Report⁷ states “Nowhere is change needed more than in the area of accountability. After eight years of governing Kosovo, UNMIK faces what can only be described as a crisis of legitimacy. Some of that crisis reflects frustration among Kosovo’s Albanian majority about the slow progress toward resolving status, and among Serbs and other minorities about UNMIK’s failure to secure their rights.”

35. OIOS also was of the opinion that the current accountability mechanism for PISG ministries and UNMIK was ineffective based on the weaknesses identified in the major elements of accountability as summarized below:

- *The Office of the Auditor-General under UNMIK Regulation No. 2000/7, amended by UNMIK Regulation No. 2002/18* - In a recent draft report concerning the activities of the Investigation Task Force (ITF) in UNMIK, the ITF stated that “the OAG has no power to compel clients to respond or enact change” and, the “enforcement is left to the discretion of the SRSG.” DCA commented that such enforcement is rarely applied. OIOS is concerned as this means that serious deficiencies, for example, in the audit of the 2005 financial statements of the Kosovo Consolidated Budget (KCB) by the OAG have not been promptly corrected.
- *An internal audit function in each ministry under UNMIK Regulation No. 1999/16* - All UMRs surveyed stated that their Ministries had established an Internal Audit Unit (IAU) and only two out of nine expressed reservations on the effectiveness of the IAU. However, OIOS noted that in the 2005 audit of the KCB financial statements, the OAG stated that it was not yet able to rely upon the activities of the internal audit units to provide audit assurance that internal controls were being properly applied. OIOS is aware that the Human Dynamics Consortium has been commissioned by the European Union to develop the capacity of the internal audit function in the Government of Kosovo, however, the process will not be completed until September 2008 at the earliest.
- *The Kosovo Anti-Corruption Agency under UNMIK Regulation No. 2005/26* - In the recent draft report of the ITF in UNMIK, the ITF stated that: “the creation of the Kosovo Anti-Corruption Agency (KACA) was envisaged in the Kosovo anti-corruption strategy promulgated in March 2004, but it was only in July 2006 that the Agency was established by the Assembly of Kosovo pursuant to Law 2004/34”. The draft report further noted that: “the anti-corruption strategy envisaged that KACA should have both a preventative and law enforcement mandate, with the ability to investigate and prosecute corruption offences independently.” Furthermore, the ITF stated that: “by the time the anti-corruption action plan was published in January 2006, the law enforcement component had disappeared and it had the mandate only to conduct administrative

⁷ Human Rights Watch, Better Late Than Never, Enhancing the Accountability of International Institutions in Kosovo, Number 2, June 2007.

investigations. This confirmed Special Envoy Eide's concern that the necessary administrative and legislative actions to fight organized crime and to prevent corruption in provisional institutions had not been taken yet."

- *The Ombudsperson in Kosovo under UNMIK Regulation No. 2000/38-* OIOS noted that the July 2005 Fifth Annual Report of the Ombudsperson Institution in Kosovo stated that "both the immunity of UNMIK and the partial lack of cooperation of UNMIK and the PISG, coupled with weak supporting legislation, made it very difficult for the Ombudsperson to perform his work in an adequate and effective fashion."

Recommendation 4

(4) UNMIK in cooperation with the PISG Ministries should implement effective accountability mechanisms, by establishing and monitoring a comprehensive action plan for strengthening the authority and capacity of key elements of accountability including the OAG, Internal audit function within PISG Ministries, the Kosovo Anti-Corruption Agency and Ombudsperson Institution in Kosovo.

Standards for Kosovo

36. In his report S/2002/436 on the United Nations Interim Administration Mission in Kosovo, April 2002, the Secretary-General stated "I have asked my Special Representative to develop benchmarks against which progress can be measured in the critical areas of the rule of law, functioning democratic institutions, the economy, freedom of movement, the return of internally displaced persons and refugees and contributions to regional stability." In this regard, the eight Standards for Kosovo were developed, which are: (i) functioning democratic institutions; (ii) rule of law; (iii) freedom of movement; (iv) sustainable returns and the rights of communities and their members; (v) economy; (vi) property rights; (vii) dialogue; and (viii) the Kosovo Protection Corps.

37. "Working towards the benchmarks set out by my Special Representative within the framework of the "standards before status" policy remains the guiding principle for the current phase of UNMIK activities" as stated in the Report of the Secretary-General on UNMIK dated 26 June 2003 (S/2003/675). The Standards for Kosovo were divided into 109 goals and further divided in March 2004 by the Kosovo Standards Implementation Plan (KSIP), which describes the 506 actions that must be taken in order for the Standards of Kosovo to be achieved.

38. To monitor the progress of the implementation of the Standards, Standards Implementation Working Groups were set up and were generally co-chaired by a Minister and an UNMIK Pillar Head and met on a periodic basis. In addition, a Technical Assessment Report is written by UNMIK in consultation with the Kosovo Government and the Contact Group and is attached as an Annex

to the Secretary-General's periodic reports to the Security Council on UNMIK. OIOS noted that at least 60 UNMIK staff were monitoring and reporting on the progress made in achieving the Standards for Kosovo.

39. However, OIOS noted that, based on the UNMIK Strategy Coordinator's assessment as of April 2007⁸, none of the eight Standards has been fully achieved, nor had the objective of "A Kosovo where all – regardless of ethnic background, race or religion – are free to live, work and travel without fear, hostility or danger and where there is tolerance, justice and peace for everyone." In this regard, in his report S/2007/395⁹, the Secretary-General stated "there has been concrete progress in many areas of standards, although results in some areas have been mixed and clearly much remains to be done." Whilst OIOS was concerned that further achievements may be limited as DCA commented that upon departure of UNMIK, the standards process will be replaced by the process and action plan for European Integration.

Recommendation 5

(5) UNMIK should review the lessons learned from the Standards for Kosovo process developed by the UNMIK Strategy Coordinator, the results of which should also be used as a reference in developing a more robust action plan for achieving the standards.

B. Establishment of PISG Local Government and Transfer of Responsibilities

40. The PISG local administration was established by UNMIK Regulation No. 2000/45 on Self-Government of Municipalities with UNMIK acting as the "Central Authority" under the responsibility of the SRSG. Subsequently, the institutional basis of local administration/government was provided by the Constitutional Framework for Self-Government in Kosovo, as stipulated by Regulation No. 2001/9, in Chapter 1 – Basic Provisions – Article 1.3: "Kosovo is composed of municipalities, which are the basic territorial units of local self-government with responsibilities as set forth in UNMIK legislation in force on local self-government and municipalities in Kosovo". There are 30 municipalities in Kosovo. The SRSG's reserved powers and responsibilities are stipulated in Article 8.1 (w) as the "responsibility to ensure that the system of local municipal administration functions effectively based on internationally recognized and accepted principles".

41. As was the case of PISG ministries, OIOS is of the opinion that the failure to establish criteria to ensure that the transfer of responsibilities is carried out at the most appropriate time in terms of the readiness of PISG municipal administrations was also a major cause of serious deficiencies in the performance of PISG municipal administrations as noted in the following sections of the report. Further, the lack of effective arrangements for monitoring and ensuring

⁸ UNMIK Strategy Coordinator, Assessment of Standards Goals to April 2007.

⁹ Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, June 2007.

that the transferred responsibilities have been properly carried out contributed to the current status of performance.

Transfer of financial management responsibilities

42. By the end of 2002, most municipalities received the responsibility for financial administration from UNMIK and the Ministry of Finance and Economy upon obtaining the certificates as set by the section 46.2 of Chapter 9 of UNMIK Regulation No.2000/4 stating “responsibility for financial administration shall not be transferred to a municipality until the independent auditor has certified that adequate budgetary and financial management systems are in place and that the municipal civil service has the capacity and capability to implement effective financial procedures and controls. Until such time, the financial management procedures established by UNMIK shall remain in force.”

43. However, OIOS was of the opinion that the quality of financial management and accounting was contrary to the certification based on the result of the audit of the financial statement of the municipalities. The audit opinions issued since 2001 on financial statements of municipalities are summarized in Table 2.

Table 2: Municipality financial statement audit opinions

Audit Opinions	2001	2002	2003	2004	2005	Total
Fair	19	2	0	2	0	23
Qualified	2	0	2	0	0	4
Disclaimers	8	25	28	28	25	114
Total	29	27	30	30	25	141

44. OIOS considered that the disclaimer of audit opinion presents serious risks of mismanagement or fraud due to the absence of adequate financial management and accounting practices. There were also many weaknesses and non-compliance with the Law on Public Finance Management and the Law on Public Procurement reported in the individual audit reports that indicated a clear lack of controls and the absence of an internal control system at municipalities. These findings included:

- Municipal accounts not being reconciled with the national accounting system;
- Insufficient controls over cash;
- Assets and liabilities not presented accurately and completely;
- Inadequate maintenance of personnel files; and
- Failure of staff to obtain continuous training and professional development, particularly those staff involved in procurement and financial operations.

45. In response to OIOS’ survey questionnaire, some MRs indicated that the handing over of financial management was carried out as soon as systems were in place without testing the adequacy of implementation and control mechanisms.

It was also mentioned that even the local institutions, which insisted on a speedy transfer for political reasons, were at times stunned and caught unprepared by “the sudden shower of new responsibilities.” In OIOS’ opinion, the DCA should have retained a more active supervisory role subsequent to the certification of municipalities until they were deemed by UNMIK as being prepared to operate independently or with minimal guidance/decreased role of UNMIK.

Transfer of operational management responsibilities and monitoring

46. In OIOS’ survey, MRs were asked whether they thought that the transfer of responsibilities was properly planned and implemented and also asked to provide their views on the lessons learned. Twelve of the thirty MRs “explicitly” mentioned that the transfer of responsibilities to municipalities was not properly planned and/or implemented. A further nine did not explicitly mention whether the transfer of responsibilities was properly planned and or implemented, but indicated either reservations, lessons learned or weaknesses in the planning and/or implementation process. Nine MRs commented that the transfer of responsibilities was satisfactorily planned and implemented.

47. Several weaknesses were noted by MRs in the transfer of responsibilities within the areas of political considerations and assessments; capacity and human resources; guidance provided by UNMIK and; oversight, systems and procedures. Furthermore, the MRs provided numerous lessons learned which include, *inter alia*, the following:

- A system should have been put in place to monitor municipal assets and UNMIK should have provided training in and monitored procurement processes and financial management;
- UNMIK should have trained staff and stayed on longer in matters of procurement, tenders, selection of bidders and accounting for resources and expenditures.
- A checking mechanism should have been put into place to raise professional standards and skills to the new challenges and opportunities; and
- Realism about what can be achieved in the time available; and robustness about what the real priorities are.

48. As stipulated in UNMIK Regulation No. 2001/9, UNMIK’s main responsibility with regard to municipalities is “to ensure that the system of local municipal administration functions effectively based on internationally recognized and accepted principles”. In this regard, these retained powers and responsibilities of the SRSG include the rights to directly intervene in the financial activities of each municipality, to exercise sanctions in the event of violations, and to continue to provide technical assistance and support.

49. The task of monitoring is left to the MRs, whose detailed responsibilities are set forth in UNMIK Regulation No. 2000/45 including:

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- (a) Approve the appointments and dismissals of senior municipal officials and supervise all other appointments in order to ensure that they reflect a fair proportion of qualified representatives of communities;
 - (b) Approve the budgets;
 - (c) Ensure that financial resources are spent in conformity with the budget;
 - (d) Ensure that all financial decisions are made in a sound and transparent manner; and
 - (e) Ensure that all financial transactions are properly recorded.

50. However, OIOS determined that the monitoring arrangement was not effective to the extent required by UNMIK Regulation No. 2000/45 based on the findings that are discussed in the below sections of this report. OIOS noted the following weaknesses, in particular:

- MRs pointed out that there was the lack of clarity on the interaction between UNMIK Regulation No. 2000/45 and other legislation concerning their responsibilities. There was a perception that their responsibilities had been changed with the adoption of the Constitutional Framework. However, UNMIK Regulation No. 2000/45 was never formally amended to this effect;
- As indicated in the Municipal Standards Questionnaire, the scope of monitoring by the MRs and the OSCE municipal monitoring teams did not include finances, related internal controls and compliance with financial regulations and rules ; and
- Current DCA resources of one UNMIK staff member per municipality, do not allow UNMIK to discharge its responsibilities as set forth in UNMIK Regulation No. 2000/45.

51. During the exit conference held on 9 August 2007, UNMIK stressed that once the transfer takes place, accountability passes to local governmental structures including the Legislative and Executive Branch and that UNMIK then only retains ultimate accountability but no direct control. Therefore, in UNMIK's opinion, DCA does not have direct control over the human resources, and it is the PISG's responsibility to address and correct irregularities.

Recommendations 6 to 9

(6) UNMIK should take immediate steps to strengthen the financial management and accounting systems of municipalities, which should provide a basis for external auditors to conduct audits and to form an opinion on the financial statements.

(7) UNMIK should establish an effective and systematic mechanism for monitoring and evaluation of the extent to which the competencies it transfers to the PISG are being properly assumed.

(8) UNMIK should take necessary steps, including capacity building, clarification of the interaction between UNMIK Regulation

No. 2000/45 and other legislation concerning municipal representatives' responsibilities, and firmer intervention by the SRSG, where necessary, to ensure that the PISG municipalities assume the transferred competencies appropriately.

(9) UNMIK should ensure that decisions relating to the transfer of further competencies to municipalities are taken only when there is adequate assurance that detailed minimum criteria for readiness to assume the competencies has been met.

52. *In commenting on the draft report, the UNMIK Administration stated that OIOS did not adequately take into account the different phases which UNMIK had gone through. UNMIK further stated that in the initial phase, from 1999, UNMIK exercised executive authority in municipalities; however, during 2002/03, responsibilities, including financial responsibilities, were transferred to the PISG, and UNMIK's responsibilities changed during the years of its interim administration in response to changing circumstances in Kosovo and due to the transfer of its responsibilities to the PISG.*

53. OIOS would like to clarify that the audit duly considered the different phases UNMIK came through. OIOS also points out that the transfer of responsibilities to the PISG does not mean that the accountability of UNMIK ended. PISG local administration was established by UNMIK Regulation No. 2000/45 on Self-Government of Municipalities with UNMIK acting as the "Central Authority" under the responsibility of the SRSG. The institutional basis of local administration/government was provided by the Constitutional Framework for Self-Government in Kosovo, as stipulated by Regulation No. 2001/9, and the SRSG's reserved powers and responsibilities are stipulated in Article 8.1 (w) as the "responsibility to ensure that the system of local municipal administration functions effectively based on internationally recognized and accepted principles". Therefore, OIOS believes that UNMIK is responsible for corrective measures and actions to address the issues identified during the audit and to implement the suggested recommendations.

Governance, working level arrangements and coordination

54. The highest representative body of the municipality is the Municipal Assembly assisted by its statutory committees and offices. The Board of Directors assists the Municipal Assembly and its committees by providing all necessary information and reports for the decision-making process; assists the President and the Chief Executive Officer; and implements all decisions of the municipality.

55. OIOS' review indicated that statutory committees and working groups were established in most of the municipalities. However, a substantial number of established statutory committees and offices, working groups and councils were not functioning effectively. OIOS found the following:

Statutory Committees and Offices including Policy and Finance Committee, a Communities Committee and a Mediation Committee

56. In response to OIOS' questionnaire, 25 MRs stated that either the communities committee and/or the mediation committee in their municipalities were not functioning well because committee members did not always understand their roles and responsibilities, particularly their roles in protecting the rights of minorities. Also, mediation committees were inactive because: (i) few cases were referred to them by the communities committees; (ii) Serb members did not participate; and (iii) translation units were not established.

57. According to the UNMIK DCA Field Monitoring Unit, since the promulgation of UNMIK Regulation No. 2000/45, the communities committees had difficulties in establishing their constitutions and carrying out their responsibilities. According to the Unit, 45 per cent of communities committees and 21 per cent of established mediation committees were considered as functioning. Mediation committees are only competent to consider matters referred to them from the communities committees, and such referrals rarely occur. Several municipalities reported that their mediation committee had not met over the last two years, raising doubts as to the overall sustainability of this mechanism.

Municipal Working Group on Returns

58. DCA required municipalities to establish Municipal Working Groups on Returns as the municipal bodies responsible for coordinating the returns process. The Municipal Standards Questionnaires showed that of the 30 municipalities, 29 had established a working group, including 8 that were partially functioning and 4 that were not functioning. In all municipalities, the chairmanship of the committee was controlled by PISG officials.

Joint Coordination Committee

59. In October 2004, UNMIK announced the establishment of Joint Coordination Committees (JCC) in all municipalities. The JCC's were to assess and promote compliance with UN Security Council Resolution 1244 (1999) and implementation of the Standards for Kosovo. The JCC's were also supposed to facilitate inter-Pillar coordination at the municipal level and help to ensure effective and consistent action by UNMIK on capacity building of municipalities. As per the JCC terms of reference, JCC members were to include the MR, the OSCE Head of Office, the Police Station Commander, local Kosovo Force (KFOR) Commander, a gender expert designated by the Office of Gender Affairs and the regional Kosovo Trust Agency officer. The Secretariat of the JCC was to be provided by DCA. The Municipal Standards Questionnaires showed that nine municipalities did not establish a JCC. Of the 20 JCC's established, only 8 were functioning properly.

Municipal Community Safety Councils

60. UNMIK Regulation No. 2005/54 on the Framework and Guiding Principles of the Kosovo Police Service (KPS) requires the KPS to cooperate fully with municipal authorities and with representatives of communities to enhance the security of members of all communities within each municipality. For that purpose, Municipal Community Safety Councils (MCSC) had to be established in each municipality. MCSCs were established in 27 municipalities, of which only 15 MCSCs were considered to be functional.

Recommendation 10

(10) UNMIK should enhance the effectiveness of statutory committees, councils, offices and working groups at municipalities by taking prompt actions to address identified difficulties, including lack of capacity of committee members and clarification of roles and responsibilities.

C. Performance of PISG Local Government

Respective roles and responsibilities between Municipalities and Central PISG

61. According to DCA, the relations between the local and central levels of government and their mutual responsibilities need to be clarified.¹⁰ Local governments in Kosovo were established before the Central Government was in place and tend to operate autonomously and independent of the central government ministries. DCA stated and OIOS agreed that there was no effective administrative mechanism at the central government level to ensure the overall functioning of local government municipalities.

Recommendation 11

(11) UNMIK, in cooperation with the Provisional Institutions of Self-Government, should strengthen oversight at the central government level and establish appropriate coordination mechanisms between central and local governments to ensure the overall functioning of local government municipalities.

Overall assessment of performance level of PISG local governments

62. UNMIK Regulation No. 2000/45 gave municipalities a wide range of powers and responsibilities. Between 2001 and 2005, the total expenditures recorded by all municipalities totaled some 500 million Euros. Furthermore, there were a number of subsequent regulations that, together with Regulation No. 2000/45, provided the legal infrastructure for the following competences reviewed during OIOS' audit:

¹⁰ Civil Administration in Kosovo 1999-2007 – Achievements, Challenges and Lessons Learned, Department of Civil Administration UNMIK.

- Providing basic local conditions for sustainable economic development (UNMIK Regulation No. 2005/44 and UNMIK Regulation No. 2005/01);
- Urban and rural planning and land use (UNMIK Regulations 2005/49 and 2003/30);
- Licensing of building and other development (UNMIK Regulation No. 2004/37);
- Local environmental protection (UNMIK Regulations 2003/09 and 2004/48);
- The implementation of building regulations and building control standards (UNMIK Regulations 2004/37 and 2005/28);
- Service provision in relation to local public utilities and infrastructure including water supply, sewers and drains, sewage treatment, waste management, local roads, local transport and local heating schemes (UNMIK Regulations 2002/12; 2004/37 and 2005/23);
- Management of municipal property (UNMIK Regulations 2000/45; 2002/12; 2006/05; 2005/13; 2001/17 and 2001/23); and
- Social services and housing (UNMIK Regulations 2005/46 and 2003/40).

63. However, a number of competencies for which municipalities are clearly responsible were not satisfactorily delivered according to the assessment of MRs surveyed and responses to Municipal Standards Questionnaires. These competencies include: (i) urban and rural planning and land use; (ii) local environmental protection; and (iii) implementation of building regulations and building control standards.

64. OIOS also noted that a UNDP survey, carried out in 2006, revealed that 42 per cent of residents in Kosovo believed that conditions in their municipalities were improving, while about the same percentage of respondents believed the opposite. Compared to the 2003 survey, people have become more pessimistic about the overall direction of things in their municipalities.¹¹ More specifically, 27 per cent of all Kosovo residents still did not have piped water, 38 per cent had no access to a public sewage/sanitation system, and seven years after the end of the conflict, there were still electricity cuts. By 2006, less than 7 per cent of Kosovo residents had access to central heating.

65. OIOS is of the opinion that the absence of effective arrangements for UNMIK monitoring and intervening was the major cause for the lack of satisfactory delivery of municipal services. The detailed findings for each of the competencies are provided in the sections below.

Providing basic local conditions for sustainable economic development

66. Kosovo had the lowest income, human development and life expectancy index ratings in the Balkans, and the province is one of the poorest in Europe. One of the primary problems resulting from the unsustainable economic and social development in Kosovo is unemployment, which at 39.7 per cent at the

¹¹ UNDP survey "Kosovo Mosaic 2006."

end of 2005 was the highest rate in the Balkans region and over 4 times higher than the average unemployment rate in EU countries.¹²

67. UNMIK Regulation No. 2005/44 on Supporting Small and Medium Enterprises (SME) and UNMIK Regulation No. 2005/01 on Private Practices in Health, together with UNMIK Regulation No. 2000/45, were the only legal basis regulating sustainable economic development at the municipal level. Municipal efforts to provide sustainable economic development can at best be described as basic services, such as helping small businesses with registration and taxation issues.

68. As a result of such limited intervention, OIOS noted that only 14 municipalities fully implemented local economic development plans according to “Municipal Standards Questionnaires” for the quarter ending April 2007. Sustainable economic development can only be achieved if it is supported by a long-term and consistent development strategy and resources to implement it. Local economies in Kosovo lack both.

69. DCA responded that it endeavored, within its limited resources, to assist municipalities to play a more active role in local economic development. However, at the date of the audit there were very limited resources, and therefore the task to develop a strategic planning framework to assist municipalities in the preparation of strategies to support long-term sustainable economic development at the local government level will have to be taken up by the European Union or other development agencies and the PISG.

Recommendation 12

(12) UNMIK should develop a framework to assist municipalities in strengthening their capacity to support long-term sustainable economic development at the local level.

Local environmental protection

70. More than 50 per cent of the respondents to OIOS’ survey cited the lack of local environmental protection as a problem. Waste management, including public littering, remains a major issue. The respondents noted that no attention had been given to environmental protection, and that general shortcomings included:

- No municipal strategy or plan for environment protection;
- Failure to implement projects geared toward environment protection;
- Environmental protection was not a priority;
- There were no checks and balances to ensure that environmental protection services were delivered; and
- Enforcement was inadequate.

¹² United Nations Development Programme, Human Development Report, 2006.

71. Specific examples were also provided: there was extreme contamination by heavy metals resulting from the past activities of the former Trepca mines. In Rahovec/Orhovac, the municipality failed to prevent the illegal extraction of gravel from the Drini river bed, even in areas close to settlements. The people in those areas are at grave risk of landslides that could result from these illegal operations. The municipality has done very little to stop the extraction, although it has strongly condemned it; and in Kaçanik/Kaçanik, there are no specific pollution control measures applied to some of the factories operating within the municipality whose activities result in air and water pollution.

72. The OAG's report of 15 June 2006 on Water Waste and Irrigation Enterprises that focused on financial management and internal control of water waste irrigation enterprises, noted that the enterprise "Pastrimi" actually deposited waste in Fushe Koso, and that there were no laws and regulations relating to the entity's environmental responsibility. The enterprise also had not prepared environmental policies or an action plan.

73. UNMIK established a Ministry of Environment and Spatial Planning which is mandated with protecting the environment. The ministry needs to be involved in developing a legislative compliance framework at the municipal level with proper control mechanisms for monitoring adherence to environmental regulations and enforcing penalties where there is failure to comply. However, DCA commented that environmental protection is a transferred responsibility within the mandate of Ministry of Environment and Spatial Planning, and it would pass along the recommendation.

Recommendation 13

(13) UNMIK should ensure that the Ministry of Environment and Spatial Planning implements a legislative compliance framework at the municipal level, including control mechanisms for monitoring adherence to environmental regulations and enforcing penalties for failure to comply.

Urban and rural planning, land use and construction

74. The Municipal Standards Questionnaire and OIOS' survey results provided examples of serious concerns on non-compliance with the Laws and UNMIK Regulations regarding urban and rural planning, land use, construction and property taxes.

Property records and immovable property rights register

75. An analysis of the Municipal Standard Questions of April 2007 indicated that Municipal Cadastral Offices functioned effectively at 23 municipalities (80%). Reasons provided for not functioning effectively at the remaining 6 offices (20%) included inefficiencies resulting from incomplete documentation and property records.

76. However, the Digital Immovable Property Rights Register system under the Law on the Establishment of Immovable Property Rights (Law No. 2002/5) including property rights, actors, buildings, and other data was installed and used in only 50 per cent of the municipalities. The Law on the Establishment of Immovable Property Rights requires the establishment of a property rights registry. DCA commented that it has facilitated the technical assistance and support to the the Kosovo Cadastral Agency and Municipal Cadastre Offices. However, DCA further commented that such failure reflects the difficulties in the area of enforcement of the rule of law, and that the Ministry of Public Services and Ministry of Local Government Administration should be tasked for remedial actions. OIOS was of the opinion that DCA should have intervened more proactively.

Recommendation 14

(14) UNMIK should ensure that the Ministry of Public Services and Ministry of Local Government Administration look into the failure of municipalities to comply with the Law on the Establishment of Immovable Property Rights (Law No. 2002/5), and implement appropriate remedial actions.

Spatial planning

77. UNMIK failed to achieve the goal of making the spatial regime of Kosovo consistent with European and international standards due to substantial non-compliance with UNMIK Regulation No. 2003/30 and the Law on Spatial Planning (Law 2003/14):

- Six municipalities had not prepared municipal spatial development, urban development or urban regulatory plans;
- Two-thirds of the municipalities had not prepared municipal spatial development and/or urban regulatory plans, and 40 per cent of municipalities did not have an urban development plan;
- Only 7 municipal spatial development plans, 10 Urban Development Plans and 6 urban regulatory plans were up-to-date, and only 17 municipalities had implemented their plans, 6 of which were outdated; and
- Some plans dated back to the 1970s, and one plan was developed in 1960. Thirteen municipalities did not implement any of the aforementioned plans.

78. DCA commented that it has been and will be instrumental in pushing many of the municipalities to implement the provisions of the Law.

Recommendation 15

(15) UNMIK should ensure that the Ministry of Environment and Spatial Planning develops an action plan to enable municipalities to comply with the Law on Spatial Planning (Law No. 2003/14) and

UNMIK Regulation No. 2003/30 requiring Municipal Spatial Development, Urban Development and Urban Regulatory Plans.

Illegal construction

79. OIOS found that only 40 per cent of municipalities regulated illegal construction, in coordination with the Ministry of Environment and Spatial Planning and in accordance with the Law on Construction (Law No. 2004/15) and UNMIK Regulation No. 2004/37.

80. There are Construction Inspectors at both the central and municipal levels, but DCA stated that there was a prevailing sense of impunity, and more specifically a fear of revenge and lack of institutional support for Inspectors at the municipal level, and that Officials discouraged enforcement. DCA viewed a strong judiciary and a committed law enforcement agency as paramount to enforce the rule of law.

Recommendation 16

(16) UNMIK should provide the necessary support to municipalities in enforcing the laws and related regulations on illegal construction.

Property tax

81. OIOS noted the following with regard to the implementation of UNMIK Regulation No. 2003/29 on property taxes.

- Three municipalities did not collect property taxes, and one municipality did not collect the tax from Kosovo-Serbian citizens.
- Six municipalities continued to withhold the issuance of official civil documents such as birth and marriage certificates to individuals who failed to prove payment of property tax.

82. DCA commented that it has been monitoring and advising the municipal authorities on effective implementation of the enforcement mechanisms available for non payment of property taxes. Further, DCA stated that it has been advising municipalities against the withholding of civil documents if taxes are not paid. OIOS concluded that UNMIK's intervention has not been effective in these instances.

Recommendation 17

(17) UNMIK should clearly instruct that all municipalities should collect property taxes in accordance with UNMIK Regulation No. 2003/29 and effectively intervene in cases where municipalities illegally withhold the issuance of personal civil documents in cases of nonpayment.

Allocation of Socially-Owned Enterprise land assets

83. There are long outstanding requests for the allocation of Socially-Owned Enterprise land assets to municipalities as required by UNMIK Regulation No. 2006/05. OIOS noted that from February to April 2007, municipalities made 56 requests to DCA to review the allocation of SOE land assets, under the administrative authority of KTA, to municipalities. At the time of the audit, 50 requests remained pending, some of which were outstanding since 2005.

84. According to DCA, the delays were due to the lack of property records and the failure of municipalities to meet the criteria contained in UNMIK Regulation No. 2006/05.

Recommendation 18

(18) UNMIK should expedite the allocation process of Socially-Owned Enterprise land assets to municipalities by strengthening municipalities' capacity to meet the prescribed criteria contained in UNMIK Regulation No. 2006/05 and establishing a timeframe for review of pending cases and future requests from municipalities.

Social housing

85. OIOS noted the following:

- Only 16 of the 30 municipalities provided for social housing as required under Section 3.1(k) of UNMIK Regulation No. 2000/45.
- Of these 16 municipalities, 50 per cent were viewed as not having clear and transparent procedures for the allocation of housing units, including complaint procedures, while 6 of the municipalities did not provide housing to minority community members, women heads of households or other vulnerable groups.
- Furthermore, in 24 municipalities, where citizens occupied residences under Kosovo Property Agency (KPA) administration, 12 did not cooperate with the KPA in assessing social housing needs, and 4 cooperated only to a limited extent.

86. DCA advised that there are housing committees at municipalities to address social housing issues and that in earlier periods UNMIK participated to ensure that the allocations of shelters were administered fairly.

Recommendation 19

(19) UNMIK should ensure that municipalities are adequately and transparently discharging their responsibility to provide social housing as required by UNMIK Regulation No. 2000/45 by reviewing the adequacy of the functioning of municipal housing committees.

Informal settlements

87. OIOS noted that 16 of the 30 municipalities had informal settlements, which are neighborhoods built without construction and urban planning approvals and, in some cases, without proof of actual land ownership. Five of these municipalities did not map the informal settlements; three municipalities did not have plans to regularize them; and nine municipalities did not include the settlements in their urban development/regulatory plans. DCA explained that UNMIK assisted in eliminating informal settlements in collaboration with other agencies, but stated that the Ministry of Environment and Spatial Planning should be considered as the responsible PISG organ.

88. At OIOS' exit conference with the UNMIK Administration held on 9 August 2007, DCA argued that the thrust of OIOS' findings was based on the performance of the PISG and wrongly held UNMIK responsible for PISG shortcomings.

89. Although OIOS recognizes that DCA has limited resources at this stage to effectively discharge its responsibilities, it remains UNMIK's responsibility to take corrective measures and to implement the recommendations to correct the deficiencies identified by the audit.

Recommendation 20

(20) UNMIK should ensure that informal settlements are promptly addressed by instructing the municipalities and the Ministry of Environment and Spatial Planning to implement an action plan for their regularization or elimination.

D. Promotion of Human Rights

90. The report submitted by UNMIK to the United Nations Human Rights Committee concerning the human rights situation in Kosovo since June 1999¹³ described the general framework within which human rights were promoted in Kosovo, including establishing the Ombudsperson Institution in Kosovo under UNMIK Regulation 2000/38; and the OSCE Mission in Kosovo developing long-term human rights capacity in Kosovo through a number of intensive training courses provided to its own local professional staff and establishing a Human Rights Promotion Section with staff located in all regions of Kosovo.

91. However, OIOS takes note of the following reports which presented serious concerns regarding the human right situation in Kosovo and therefore suggested that the current framework of human right promotion has not been effective:

¹³ United Nations, International covenant on civil and political rights, Human Rights Committee, Report submitted by the UNMIK to the Human Rights Committee on the human rights situation in Kosovo since June 1999, Kosovo (Serbia and Montenegro), 13 March 2006.

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- The July 2006 Amnesty International Briefing to the Human Rights Committee (HRC) on Kosovo and UNMIK¹⁴ stated: “Amnesty International wishes to highlight its grave concerns about certain violations of human rights in Kosovo since 1999. Amnesty International also draws the HRC’s attention to the continuing impunity enjoyed by those responsible for grave human rights violations, including war crimes and crimes against humanity. UNMIK was mandated under [UN Security Council Resolution 1244/99] to protect and promote human rights. Amnesty International considers that UNMIK failed in many respects to abide by or uphold international human rights law, including the International Covenant on Civil and Political Rights (ICCPR), incorporated into applicable law in Kosovo under UNMIK Regulation[s] 1999/1 and 1999/24.”
 - The 2006 report of Minority Rights Group International¹⁵ stated: “This report tracks a clear failure on the part of the international protectorate to learn lessons from the past and draw on the minority rights expertise available to it in the UN and other bodies. This failure has allowed decision-makers to remain unaccountable, and produced a Constitutional Framework that refers to minority rights so broadly that they are too wide to be effective. Instead of integration, the current situation encourages the opposite: segregation.” The report also states “The situation of minorities today in Kosovo is the worst in Europe.”
 - The October 2007 report of OSCE on a legal analysis of trafficking in persons cases in Kosovo concluded that “the problem of trafficking in human beings (“trafficking”) continues to be a major human rights concern in Kosovo.” and “the OSCE remains deeply concerned by the continuing failure of the Kosovo judicial system to adequately respond to the worrying phenomenon of trafficking in human beings.

92. Furthermore, OIOS’s review of gender and minorities statistics illustrated that the Kosovo civil service has not achieved the required representation of women as required by the Law on Gender Equality in Kosovo (2004/2) promulgated by UNMIK Regulation No. 2004/18, which calls for equal representation that is explicitly defined as a minimum of 40 per cent of women. The central government of Kosovo also has not achieved the required representation as required by Minorities Decision No. 5/154 of the Government of Kosovo issued in June 2005, which called for 16.6 per cent representation of minorities in the Kosovo central government.

93. OIOS is of the opinion that the lack of human capacity in each ministry was one of the causes for not achieving the required representation levels. For example, human rights offices and gender offices had been established within the PISG Ministries, however, due to a lack of funding, the staff performed their responsibilities on a part-time basis, in addition to their other duties.

¹⁴ Amnesty International, Kosovo (Serbia and Montenegro) United Nations Interim Administration Mission in Kosovo, Briefing to the Human Rights Committee, 87th Session, July 2006.

¹⁵ Minority Rights Group International, Minority Rights in Kosovo under International Rule, by Clive Baldwin.

Recommendations 21 to 22

(21) UNMIK should instruct the Organization for Security and Co-operation in Europe, as the lead agency in human rights matters, to evaluate the effectiveness of the current framework for human right promotion and develop a comprehensive action plan to address the human rights concerns in Kosovo.

(22) UNMIK, in cooperation with the PISG, should strengthen the capacity of human rights and gender offices in the Ministries, to step up the efforts for ensuring that representation of women and minorities in government will reach the required levels of 40 per cent and 16.6 per cent, respectively.

E. Returns of Refugees and Displaced Persons

Progress of returns

94. Paragraph 11 of UNSCR 1244 (1999) states that the main responsibilities of the international civil presence will include “assuring the safe and unimpeded return of all refugees and displaced persons to their homes in Kosovo.” Along with UNMIK, international counterparts involved in facilitating and administering returns are UNHCR, UNDP, KFOR and the OSCE Mission in Kosovo.

95. The Strategic Framework on Communities and Returns was launched by the SRSG and Prime Minister on 19 July 2005.¹⁶ Yet, in his report S/2007/395, the Secretary-General stated that “the number of Kosovo Serb returns remained low.¹⁷ Although conditions for returns have gradually improved, the factors that discourage large-scale return movements continue to exist, such as the lack of employment opportunities, unresolved property disputes and continuing perceptions of insecurity.” The number of returns totals 16,129 for the period 2000 to 2006, out of a total of 228,365 identified by UNHCR.

96. In addition to the above cited reasons for not achieving satisfactory levels of returns, OIOS noted that the current structure and management of the Ministry of Communities and Returns as further hampering the large scale return.

97. OIOS is concerned about the fundamental operational issues, such as the lack of a functioning and effective internal audit unit, capacity of Ministry staff members and ineffective implemented returns projects that lacked strategy.

98. DCA commented that its staff raised issues of non-compliance and financial mismanagement within the Ministry. However, the situation remains problematic despite DCA’s best efforts.

¹⁶ UNMIK and PISG, Ministry for Community and Return, Strategic Framework on Communities and Returns, Pristina, 2005.

¹⁷ Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, June 2007.

99. OIOS is of the opinion that until and unless the Ministry of Communities and Returns is structured efficiently and staffed with personnel having adequate capacity, and the conditions for returns are fully achieved in cooperation with all parties involved, the contribution of UNMIK to the success of sustainable returns, will not be as effective as possible.

Recommendation 23

(23) UNMIK should take immediate action to improve the management of the Ministry of Communities and Returns, which should include the commissioning of an independent review of its management practices and operational effectiveness, and firmer intervention by the SRSG on any exceptions and cases of mismanagement.

The Roma Mahala project

100. OIOS assessed the achievement of the Roma Mahala project, which was considered to be of the most visible return project in Kosovo. Following the armed conflict in Kosovo in 1999, Roma Mahala, one of the largest permanent Roma, Ashkhali, Egyptians (RAE) settlements in Europe was looted and destroyed, and all of the inhabitants (approximately 8,000) were forced to leave the area and seek refuge elsewhere. The majority of the RAE population sought refuge in other countries, while a minority (approximately 1,000) remained living in three authorized Internally Displaced Persons (IDP) camps: Zitkova/Zihtkoc, Cesmin Lug/Lluge and Leposavic/Leposaviq, and the illegal IDP camp at Kablare/Kablar Barracks in northern Kosovo, which were identified by the World Health Organization (WHO) in 2004 as lead-contaminated.

101. RAE advocate groups such as the 'European Roma Rights Centre' and the media blamed UNMIK for the lack of planning to address the plight of the RAE from 1999 to 2005, resulting in international pressure on UNMIK and the PISG to take concrete remedial actions to resolve the problem. As a result, UNMIK established two task forces in 2005 to manage the Roma Mahala Project. The UNMIK Task Force on Relocation was established to develop the infrastructure at Camp Osterode for temporary human habitation to relocate the RAE's from the lead-contaminated IDP camps, while the UNMIK Task Force on Reconstruction was established to provide housing for the RAE at the former Roma Mahala settlement.

102. OIOS is concerned that the first phase movement of RAE back to Roma Mahala was not carried out until March 2007; more than seven years after the RAE population were forced to leave in 1999, and only accommodated 118 people as of August 2007. DCA commented that "the experience gained over the past years clearly demonstrates that there is latent opposition both from the informal RAE and Serbian leaders to the IDP's move to Roma Mahala."

103. OIOS is also concerned that the RAE communities in those camps previously identified as being lead-contaminated in 2004 by the World Health Organization, were not relocated until early 2006. DCA commented that "Once

apprised of the situation by WHO, UNMIK started looking for solutions. However, identification of lead-safer environment due to the general environmental situation in the North, lack of adequate technical resources and funding protracted the exercise.”

104. OIOS’ comprehensive assessment of the adequacy of the implementation of the project was hampered by the serious delays in the provision of key documents and information on financial management and reporting, audit and evaluation and contract related files. DCA explained that there have been too many agencies involved in the project starting from UNHCR; UNDP took over the oversight and coordination of the project since July 2007. As such, any re-creation of respective files should be undertaken by UNDP.

Recommendations 24 to 25

(24) UNMIK should ensure the availability of complete and comprehensive documents and information on the implementation of the Roma Mahala project.

(25) UNMIK should carry out an evaluation of the Roma Mahala project and determine accountability for the limited achievements of the project.

V. ACKNOWLEDGEMENT

105. We wish to express our appreciation to the Management and staff of UNMIK for the assistance and cooperation extended to the auditors during this assignment.

STATUS OF AUDIT RECOMMENDATIONS

Recom. no.	C/O ¹	Actions needed to close recommendation	Implementation date ²
1	O	Submission to OIOS of the document reflecting the established monitoring and evaluation mechanism to monitor and evaluate the extent to which the PISG Ministries assume its transferred responsibilities.	Not provided
2	O	Submission to OIOS of the action plan with the necessary steps, including capacity building and intervention by the SRSG to ensure that the PISG Ministries assume the transferred competencies appropriately.	Not provided
3	O	Submission to OIOS of the document containing the established minimum criteria that should be achieved before UNMIK transfer further competencies to PISG Ministries.	Not provided
4	O	Submission to OIOS of an action plan to strengthen the authority and capacity of key elements of accountability including the OAG, Internal audit function within PISG Ministries, the Kosovo Anti-Corruption Agency and Ombudsperson Institution in Kosovo.	Not provided
5	O	Submission to OIOS of the lessons learned from the Standards for Kosovo process and the action plan developed for achieving the standards.	Not provided
6	O	Submission to OIOS of the action plan to strengthen the financial management and accounting systems of municipalities.	Not provided
7	O	Submission to OIOS of the document reflecting the established monitoring and evaluation mechanism to monitor and evaluate the extent to which the municipalities assume their transferred responsibilities.	Not provided
8	O	Submission to OIOS of the action plan with the necessary steps, including capacity building, clarification of the interaction between UNMIK Regulation No. 2000/45 and other legislation concerning municipal representatives' responsibilities, and firmer intervention by the SRSG, where necessary, to ensure that the PISG municipalities assume the transferred competencies appropriately.	Not provided
9	O	Submission to OIOS of the document containing the established minimum criteria that should be achieved before UNMIK transfer further competencies to municipalities.	Not provided
10	O	Submission to OIOS of an action plan to enhance the effectiveness of statutory committees, councils, offices and working groups at municipalities.	Not provided
11	O	Submission to OIOS of an action plan to strengthen oversight of municipalities at the central government level and documentation that provide established coordination mechanisms between central and local governments.	Not provided
12	O	Submission to OIOS of the framework to assist municipalities in strengthening their capacity to support long-term sustainable economic development at the local level.	Not provided
13	O	Submission to OIOS of the Ministry of Environment and Spatial Planning's legislative compliance framework for municipalities that include control mechanisms to monitor adherence to environmental regulations and enforcing penalties for failure to comply.	Not provided
14	O	Submission to OIOS of the Ministry of Local Government Administration's remedial action plans to address the failure of municipalities to comply with the Law on the Establishment of Immovable Property Rights (Law No.	Not provided

		2002/5).	
15	O	Submission to OIOS of the Ministry of Environment and Spatial Planning's remedial action plan to address the failure of municipalities to comply with the Law on Spatial Planning (Law No. 2003/14) and UNMIK Regulation No. 2003/30 requiring Municipal Spatial Development, Urban Development and Urban Regulatory Plans.	Not provided
16	O	Submission to OIOS of UNMIK's action plan to support municipalities in enforcing the laws and related regulations on illegal construction.	Not provided
17	O	Submission to OIOS of the document instructing municipalities to collect property taxes in accordance with UNMIK Regulation No. 2003/29 and <u>not</u> to withhold the issuance of personal civil documents in cases of nonpayment.	Not provided
18	O	Submission to OIOS of an action plan to expedite the allocation process of Socially-Owned Enterprise land assets to municipalities and the established timeframe for review of pending cases and future requests from municipalities.	Not provided
19	O	Submission to OIOS of the results of UNMIK's review of the adequacy of the functioning of municipal housing committees.	Not provided
20	O	Submission to OIOS of the instruction to municipalities and the Ministry of Environment and Spatial Planning to implement an action plan for the regularization or elimination of informal settlements.	Not provided
21	O	Submission to OIOS of the instruction to the Organization for Security and Co-operation in Europe to evaluate the effectiveness of the current framework for human right promotion and to develop an action plan to address the human rights concerns in Kosovo.	Not provided
22	O	Submission to OIOS of action plans to strengthen the capacity of human rights and gender offices in the Ministries and to increase the representation of women and minorities in government to the required levels.	Not provided
23	O	Submission to OIOS of the results of the independent review of the management practices and operational effectiveness of the Ministry of Communities and Returns.	Not provided
24	O	Submission to OIOS of confirmation that UNMIK established complete and comprehensive documents and information on the implementation of the Roma Mahala project.	Not provided
25	O	Submission to OIOS of the evaluation report on the evaluation of the Roma Mahala project.	Not provided

1. C = closed, O = open